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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 464

THE PEOPLE OF PUERTO RICO,
PETITIONER,

v.

RAMON ANTONIO FOURNIER SAMPEDRO,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

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v.

RAMON ANTONIO FOURNIER SAMPEDRO,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioner, The People of Puerto Rico, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the First Circuit, entered in the above-entitled case on September 8, 1960.

Citations To Opinions Below

The opinion of the Court of Appeals is printed as Appendix A hereto, infra, p. 13;[1] the opinion of the

[1] At the time this petition is sent to the printer the opinion is still unreported.

Supreme Court of Puerto Rico is reported at 80 Puerto Rico Reports 376 and is printed in the Record Appendix to Brief of Appellant filed in the Court of Appeals, pp. 56-131, copies of which have been filed together with this petition.

Jurisdiction

The judgment of the Court of Appeals was entered on September 8, 1960. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254(1).

Question Presented

Whether the Court of Appeals for the First Circuit erred in holding that respondent's oral confession was involuntary and that its admission in evidence deprived respondent of the due process of law.

Constitutional Provision Involved

The Constitutional provision involved is the due process clause of the Fifth Amendment to the Constitution of the United States.

Statement

As appears from the "Agreed Statement as Record on Appeal", filed as "Record Appendix to Brief for Appellant" in the Court of Appeals,[2] respondent was "detained for investigation" on October 7, 1950 (R. 7) in connection with the disappearance of his former wife, Iris Nereida Hernandez Matos, who was missing since Septem-

[2] References hereinafter to this record will be identified by abbreviation "R."

ber 7, 1950. (R. 3) On October 8, 1950, the body of Iris Nereida was found "buried in the sand underneath the cement floor of tomb No. 4 of Fournier Cemetery, of which the defendant was manager and co-owner. The body was lying on its face with the legs and arms bent over her back. It was fully clothed. . . A woman's silver belt was wound around the neck of the body, in the form of tourniquet. The belt had been wound twice around the neck and knotted slightly to the right side, and inside the knot there was a 4½ inch nail. The nail was somewhat bent inside the knot of the belt. Death had occurred approximately six weeks previously. The belt was tied immediately underneath the larynx and there was a deep depression on her neck. The larynx showed two fractures and the walls of the trachea were compressed by the pressure of the belt". (R. 4) According to the pathologist the cause of the death was asphyxia by strangulation in a manner in which the victim could not have done it herself. (R. 4) (The "Agreed Statement as Record on Appeal" further shows that "The undisputed circumstantial evidence proved that on September 7, 1950, approximately at 11 p.m., the defendant buried the body of Iris Nereida at the bottom of tomb No. 4 of the Fournier Cemetery." (R. 5))

The undisputed facts also show that defendant remained "detained for investigation" from October 7, 1950 to October 10, 1950. "He was not questioned until the third day of his detention, but was held incommunicado without seeing any relative, friends or attorney. During daytime he was detained in the office of the district attorney and at nighttime he was taken to the police station where he slept. He was never submitted to any kind of personal indignity or physical violence. At no time were any promises, threats or offers made to him to induce him to confess or testify. He was always permitted to rest, sleep, and take food

normally. . . [He] had books and newspapers at his disposal, a fan to keep him kool (sic) and an armchair to rest and take a nap. He felt tranquil and actually spent most of his time reading detective stories. The bed where he slept in the police station, during the nights of October 7-8 and 8-9, had a mattress, sheets and pillows." (R. 7-8) He never asked to see an attorney or relative and no attorney or relative asked to see him. (R. 8)

On October 8, when the body of Iris Nereida was found, as referred above, defendant was brought to the cemetery and was asked three or four questions to identify the body. (R. 8-9)

"On Monday, October 9 at 10 o'clock at night, the district attorney began to question the defendant. The examination continued uninterruptedly for six hours." A short interval after this examination defendant began to make a detailed confession which he finished at about 6:00 A.M. (R. 10)

As it appeared that defendant had killed his wife at his partly constructed house in the ward of San Anton (R. 19), the District Attorney asked him about going to San Anton "tomorrow" but the defendant said: "No, when you wish." He remained in the office, "sitting down, walking, drank coffee early in the morning (and) washed his face."

According to the undisputed evidence (R. 25-47), defendant was taken to the San Anton house at about 11:00 A.M., October 10, 1950, arriving there shortly afterward in the company of the District Attorney, several detectives and several newspapermen and photographers. These persons, including the newspapermen and photographers, testified that there the defendant was tranquil, that he confessed voluntarily, that he answered all questions, including those of the newspapermen, calmly, without getting upset; that he received kind treatment from the district

attorney and was kind in his answers to those present, and that nobody interfered with him while he moved about explaining how he had murdered his wife and voluntarily posing for pictures showing the different stages of the crime committed.

It is also undisputed that at that time defendant was a strong young man 23 years of age and had attended universities in Puerto Rico and the United States.

Fournier was submitted to trial and was found guilty of murder in the first degree on January 26, 1951. (R. 2) Both above mentioned confessions were received in evidence under the prevailing practice in Puerto Rico, which requires the trial judge to pass as a preliminary matter on the question of whether the confession is voluntary, in the absence of the jury, excluding the confession if the evidence shows it to be involuntary as a matter of law and submitting it to the jury if the evidence on the voluntariness is conflicting. *People* v. *Fournier*, 77 P.R.R. 208, 243-244.

On Appeal, the Supreme Court of Puerto Rico held as follows:

> 1– Detention "for investigation" was illegal according to local law. *People* v. *Fournier*, supra, at pages 247-49.
>
> 2– Defendant's written confession "was wrung from him and did not represent the expression of a free and reasoned choice by him", this conclusion being based on the manner and nature of the questioning of defendant from October 9 at 10:00 P.M. to 4:00 A.M. October 10, after the illegal and incommunicado detention for three days. *People* v. *Fournier*, supra; at page 260. (For the questioning of defendant during the night of October 9-10, see R. 10-18.)

3- That in view of the undisputed facts the Court could not hold "*as a matter of law* that when he made his oral confession at San Anton the defendant was still under the coercive influences which produced" the previous written confession. *People* v. *Fournier*, supra, at page 269.

Upon remanding for a new trial, the Supreme Court instructed that, should the government offer the oral confession in the new trial, the trial court was to require that the whole previous questioning of defendant, including his written confession given from 4:00 A.M. to 6:00 A.M. on October 10, be introduced in evidence solely to show the coercive influences which produced the written confession. And the Supreme Court added that the trial court was required to instruct the jury that the written confession was coerced and was not to be considered by it on the issue of guilt and was relevant only as to the voluntariness of the oral confession; that since the first confession was coerced there is a presumption that the oral confession was similarly coerced; that this presumption could be overcome only if the evidence should show beyond reasonable doubt that the coercive influences had ceased when defendant made his oral confession and that for such a determination the jury had to consider: (1) defendant's background, (2) his illegal detention, (3) the all night questioning, (4) the nature of the latter. *People* v. *Fournier*, *supra*, at pp. 275-276.

The second trial was conducted by the trial court, without defendant's objection, "abiding by" the instructions given by the Supreme Court. (R. 84)

On February 24, 1955 Fournier was again found guilty of first degree murder in the Superior Court of San Juan and was sentenced, on March 21, 1955, to life imprisonment. Again he appealed to the Supreme Court of Puerto Rico.

which affirmed judgment on June 14, 1958. Both in the trial court and in the Supreme Court of Puerto Rico, respondent raised the question that admission of his oral confession was a violation of his rights to the due process of law under the Federal Constitution, (R. 54)

On June 20, 1958 Fournier appealed to United States Court of Appeals for the First Circuit, pursuant to 28 U.S.C., Sections 1293 and 1294. On September 8, 1960 the Court of Appeals rendered an opinion (Appendix A to this petition) and entered judgment vacating the judgment of the Supreme Court of Puerto Rico and remanding the case to that Court for further proceedings.

Reasons For Granting The Writ

1. The court below has decided a question of federal law in a way in conflict with applicable decisions of this Court.

The opinion accompanying the judgment of the Court of Appeals admits that, under *Lyons* v. *Oklahoma*, 322 U.S. 594 (1944), this would be a "somwhat close case", taking into consideration all factors surrounding the confession as analized extensively in the opinion rendered by the Supreme Court of Puerto Rico (R. 84,125), but which factors the Court of Appeals cannot allow to tip the scale in view of the authority of *Blackburn* v. *Alabama*, 361 U.S. 199 (1960).

Clearly, the *Blackburn* decision—either in the part quoted by the court below, or elsewhere—is erroneously applied when taken as authority for the proposition that a confession made by a strong man with a college education, who confesses without any threats or promises whatsoever and who, according to the undisputed evidence, was calm, tranquil, moved freely and was kindly treated, is "involun-

tary" because it was made in the presence of newspapermen and photographers.

The court below places great emphasis on the fact that this Court in *Blackburn* expresses the idea that the term "involuntary" is a "convenient shorthand" for "a complex of values which underlies the stricture against use of confessions" in criminal proceedings. We respectfully submit that the presence of witnesses to a confession who are alien to the official investigators—whether not salutary for other reasons—should not be allowed to justify the reversal of a decision by the highest court of a Commonwealth on a Court of Appeal's sole interpretation that the shorthand "involuntary" supplied by this Court includes factors not affecting the free will of the confessing person. It is indeed a novel rule that publicity affects the voluntariness of a confession. Cf. *Stroble* v. *California*, 343 U.S. 181 (1952); *Shepherd* v. *Florida*, 341 U.S. 50 (1951); *Delaney* v. *United States* 199 F. 2d 107 (C.A. 1, 1952). In effect, members of this Court have always emphasized the contrary, that is, that secrecy within police quarters is a decisive element in producing a coerced confession. See, Douglas, J., dissenting in *Crooker* v. *California*, 357 U.S. 433 (1958), at pages 443-444. Said Justice Black dissenting in *Gallegos* v. *Nebraska*, 342 U.S. 55 (1951), at page 74.

> "As is usual in this type of case the deputies say that the confession was wholly 'voluntary'; petitioner says that it was due to fear engendered by his encarceration and the actions of the deputies. Even if the officers story should happen to be correct, I believe the Constitution forbids the use of confessions obtained by the kind of secret inquisition these deputies conducted."

Whatever this Court has said against publicity, there is no authority emanating from it, and in no way from *Blackburn* v. *Alabama*, which could justify labeling respondent's confession as "involuntary" for the reason stated by the court below.

2- The judgment of the Court of Appeals is in conflict with the decisions of this Court that leave to the trier of facts all conflicts relating not only to the evidence about the voluntariness of a confession but also those conflicts relating to the inferences that could be *fairly* drawn therefrom.

Said this Court in *Lyons* v. *Oklahoma*, 322 U.S. 596, 602.

> "When conceded facts exist which are irreconcilable with such mental freedom, regardless of the contrary conclusions of the triers of fact, whether judge or jury, this Court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands. But where there is a dispute as to whether the acts which are charged to be coercive actually occurred, or *where different inferences may be drawn from admitted facts, the trial judge and the jury are not only in a better position to appraise the truth or falsity of the defendant's assertions from the demeanor of the witnesses but the legal duty is upon them to make the decision. Lisenba* v. *California*, supra, p. 238." (Emphasis supplied)

Now, what we have put in italics was not followed by the Court below. The situation is this: According to the opinion of the Supreme Court of Puerto Rico a detailed consideration of all the evidence (R. 84-125) shows that the jury had before it undisputed facts from which the inference could be drawn that the coercive influences which produced respondent's first confession had worn off when

he made his second, oral confession. The Court of Appeals does not deny that this inference could be fairly arrived at from the undisputed evidence, but satisfies itself with proposing by *fiat*, a contrary inference. It does not exclude the fairness of the inference that the Supreme Court of Puerto Rico understood could be rationally arrived at by the jury. Therefore, the reversal of the latter's judgment is a clear error; the Court of Appeals was not free to choose between fair inferences and it could reverse only if "conceded facts exist that are irreconcilable with [defendant's] mental freedom". *Lyons* v. *Oklahoma*, supra, at p. 602.

3– Upon the facts undisputed the decision of the court below cannot be reconciled with *Lyons* v. *Oklahoma*, 322 U.S. 594 (1944). We quote from the opinion of Supreme Court of Puerto Rico in respondent's first appeal:

> "The *Lyons* case is similar to the present case in that the defendant was never out of custody between the admittedly coerced confession and the second confession. The fact that in the *Lyons* case 12 or more hours elapsed between the two as contrasted with approximately 6 hours in this case does not make the *Lyons* case inapplicable here. This is particularly true when we add in our case the factor that, instead of confessing as in the *Lyons* case to a warden or one in a penitentiary, Fournier did so "freely" in the presence of newspapermen and photographers, who took a number of photographs of Fournier acting out the crime.
>
> "*Leyra* v. *Denno*, supra, is distinguishable. There a defendant, who had been virtually hypnotized by a state-employed psychiatrist into making a confession, subsequently made a series of other confessions. One was made apparently a few minutes later to a police

captain; another was made immediately following this confession to the defendant's business partner; the last was made to two assistant prosecutors '. . . several hours after the psychiatrist took petitioner in charge.' 98 L. Ed. at p. 634. The Supreme Court held that as a matter of law all the later confessions were infected with the vice of the first confession. The court said in 98 L. Ed. at p. 634: 'Unlike the circumstances in *Lyons* v. *Oklahoma* 322 U.S. 596, 602, 603, the undisputed facts in this case are irreconcilable with petitioner's mental freedom 'to confess or deny a suspected participation in a crime', and the relation of the confessions . . . is so close that one must say the facts of one control the character of the other . . .'. All were simply parts of one continuous process."

"In the *Leyra* case all the confessions came in '. . . rapid succession . . . within a period of about five hours . . .' as a result of the '. . . almost trance-like submission . . .' of the defendant to '. . . the arts of a highly skilled psychiatrist.' 98 L. Ed. at 634. They were an unbroken sequence of events produced by a single pattern of conduct. In our case the interval of approximately 6 hours between the two confessions was somewhat longer than in the *Leyra* case. *But, more important, the facts here do not foreclose absolutely the possibility that the kind of influence used to obtain Exhibit 48—quite different from psychiatric hypnotism—had worn off and that the defendant had regained his "mental freedom" by the time he spoke "freely" in the presence of a large number of newspapermen.* Accordingly, the trial court did not err in leaving for the jury the problem of determining whether as a question of fact the coercive influence which brought about the first confession also contaminated the oral confession at San Anton." *People* v. *Fournier*, 77 P.R.R. 208, 270-271. (Emphasis supplied)

Conclusion

For the foregoing reasons this petition for a writ of certiorari should be granted.

Respectfully submitted.

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Appendix A

United States Court of Appeals

For the First Circuit

No. 5550.

RAMON ANTONIO FOURNIER SAMPEDRO,

DEFENDANT, APPELLANT,

v.

THE PEOPLE OF PUERTO RICO,

APPELLEE.

APPEAL FROM THE SUPREME COURT OF PUERTO RICO.

Before WOODBURY, *Chief Judge*, and HARTIGAN and ALDRICH, *Circuit Judges*.

Gerardo Ortiz del Rivero for appellant.
Arturo Estrella, Deputy Solicitor General, with whom *Juan B. Fernandez Badillo*, Solicitor General, was on brief, for appellee.

OPINION OF THE COURT.

September 8, 1960.

WOODBURY, *Chief Judge*. On November 26, 1950, an information was filed in the now superseded District Court of San Juan, Puerto Rico, charging the appellant herein with the first degree murder of his former wife by strangulation on September 7, 1950, and with thereafter clandestinely burying her body in the Fournier Cemetery in Isla Verde of which the appellant was a part owner and the general manager. A trial by jury on plea of not guilty at which evidence of two confessions, one in writing and the other oral, was introduced over Fournier's objections, resulted in a verdict of guilty on which the court sentenced to imprisonment for life.

On appeal the Supreme Court of Puerto Rico held that

the written confession which came first, but not the subsequent oral one, "was psychologically coerced as a matter of law and was therefore obtained in violation of Federal due process of law." Further holding that the jury was not properly instructed as to the rules it should follow in deciding whether the oral confession was or was not given voluntarily, it remanded the case for a new trial. *People* v. *Fournier*, 77 P.R.R. 208 (1954). On a second trial by jury at which evidence of the oral confession was introduced, Fournier was again found guilty of murder in the first degree and was again sentenced to life imprisonment. On appeal the Supreme Court of Puerto Rico affirmed the judgment of sentence, 80 P.R.R. 380 (1958), and Fournier thereupon took the present appeal to this court under Title 28 U.S.C. §§ 1293 and 1294.

The facts are fully stated in the two opinions of the Supreme Court of Puerto Rico cited above. For present purposes a summary will do.

On September 7, 1950, Iris Nereida Hernandez Matos, who had married Fournier in 1947 and divorced him on the ground of cruelty in 1949, disappeared from her parents' home where she was living with her daughter born of her marriage with Fournier and also from her place of employment. Suspicion having attached to Fournier, he was picked up by the police at 8:00 A.M. on October 7, 1950, and "detained for investigation," to quote the phrase used by the Supreme Court of Puerto Rico to describe the custody under which he was held, until he confessed on October 10, 1950.

During the daytime Fournier was detained in the office of the District Attorney where he was provided with books and newspapers to read, a fan to keep himself cool and a comfortable chair in which to sit or nap. Although he was constantly attended by a detective, he was not disturbed but permitted to rest, read or nap and take food as he

wished. Actually, he spent most of his time reading detective stories. At night Fournier was taken to the police station where he was provided with a clean, comfortable bed and allowed to sleep undisturbed. During his incarceration he was never subjected to or threatened with any personal indignity or physical violence nor were any promises or inducements made to him to persuade him to confess. And, although he was held incommunicado, he never asked to see any friend, relative or attorney, nor did any friend, relative or attorney ask to see him.

About 24 hours after Fournier was taken into custody, that is on the morning of October 8, the body of Iris Nereida was discovered, buried in sand under the cement floor of a tomb in the Fournier Cemetery. It was lying fully dressed face down with the legs and arms bent over the back and a handkerchief tied over the nose and mouth. A woman's silver belt, her own, had been wound twice around the neck and knotted, and inside the knot was a 4-1/2 inch nail. A pathologist testified that death by strangulation had occurred approximately four to six weeks earlier.

As soon as the body was found the District Attorney directed that Fournier be brought to the cemetery. There, beside the partially disinterred and badly decomposed body of his former wife he was asked in the presence of newspapermen, police officers and others if he could identify it, or if, as the manager and part owner of the cemetery, he could explain why, to all appearances, a body had been secretly buried there. At the first trial Fournier was described by witnesses as nervous, upset and trembling during this ordeal. At the second trial witnesses described him as not at all nervous but calm and collected. The testimony at both trials was that Fournier was noncommittal, refusing to say more than that the body was that of a woman.

After the visit to the cemetery Fournier was taken back to the office of the District Attorney where he was detained as before until about 10 o'clock at night on the following day, October 9, when for the first time the District Attorney began to question him. This examination lasted for about six hours, that is until about 4 o'clock the next morning. The questions and answers were taken down by a stenographer and as reported in part in the appellant's record appendix it is clearly evident that throughout this examination Fournier insisted upon his rights as he understood them and was vigilant if not belligerent in defending them. This interrogation failed to produce an immediate confession. However, after it was over, some time between 4 and 6 A.M., under circumstances not disclosed by the record, Fournier confessed in writing. When this was finished at daybreak, about six o'clock, the District Attorney told Fournier that now they must "go to the country," meaning by that to a partially completed house in San Anton where, according to Fournier's confession, the actual killing took place. Fournier replied, "When you wish," but when the District Attorney suggested that the trip be made the next day, Fournier suggested that the trip be made at once. At 11 o'clock on the morning of October 10 after a light breakfast Fournier left San Juan for San Anton accompanied by the District Attorney, detectives, police officers, and also several members of the press, including photographers, who were permitted if not actually invited to come along by the District Attorney. The party arrived at the partially completed house in San Anton about 11:30 and almost immediately Fournier began to act out his crime as he had confessed to it. As he did so he was frequently interrupted by the representatives of the press, who not only plied him with questions, most of them incriminating, but also took a great many pictures of him in a variety of poses some of which

they suggested, while he re-enacted the killing, which he said he had done in the heat of passion. After obtaining this second confession the District Attorney took Fournier back to San Juan where he signed the earlier written confession and for the first time since he was taken into custody conferred with counsel and talked with a relative.

The question is not directly before us, but there is and can be no doubt that the Supreme Court of Puerto Rico was right in holding that Fournier's first written confession was psychologically coerced and hence involuntary, and therefore that its introduction in evidence violated Fournier's right to due process of law. The question presented to us on this appeal is whether the second oral confession was given under such circumstances that the introduction of evidence of it at the trial also constituted a violation of Fournier's right to due process of law in violation of either the Fifth or the Fourteenth Amendment.* We think this question must be answered in the affirmative.

We are not here concerned with a person without relatives or friends, or one who is immature in years, uneducated or naive. Nor are we concerned with a person who is stupid, feeble minded or insane. On the contrary, Fournier at the time he confessed was a successful young business man of wealth and family position who had enjoyed the advantages of a higher education both in Puerto Rico and in the continental United States and who was carrying on a prosperous undertaking and cemetery business in which he had been brought up by his father. But sophistication does not necessarily provide an accused with impenetrable armor; it does not establish that one has the

* It makes no difference which, for at least in this aspect it is frivolous to suppose that the phrase means one thing in the Fifth Amendment and something else in the Fourteenth. See opinion of Frankfurter, J., in *Malinski* v. *New York*, 342 U.S. 401, 415 (1945).

mental vigor and emotional fortitude to stand up against coercive pressure. Indeed, the psychiatric testimony is that Fournier in some aspects at least is somewhat emotionally immature.

Anyway there can be little doubt of the success in breaking down Fournier's resistance of the not too subtle technique of prolonged and illegal detention with considerate treatment, interrupted only by a trip to a cemetery to view the badly decomposed body of his former wife and asserted victim, followed the next day by intensive interrogation from 10 o'clock at night to 4 o'clock the following morning. It is enough to say in support of this conclusion that the evidence is clear that up to and throughout his interrogation by the District Attorney Fournier was neither meek, submissive nor overawed but vigorously resisted any encroachment on what he believed to be his rights, and yet, sometime between 4 and 6 A.M. of the third day of his illegal detention, under circumstances not disclosed by the record, he suddenly became meek and submissive and confessed. We are not, as we have already pointed out, directly concerned with whether this written confession was coerced or not. The Supreme Court of Puerto Rico has answered that question, we think quite correctly, in Fournier's favor. Nevertheless, we have to look at the circumstances under which that confession was given to decide whether the coercion which produced it must necessarily have carried over to produce the subsequent oral confession at the partially completed house in San Antón. *Leyra* v. *Denno*, 347 U.S. 556 (1954).

The Supreme Court of Puerto Rico relied upon several factors as the basis for its conclusion that the oral confession could be found by a jury to have been given voluntarily. It placed emphasis on the fact that the coercion which produced the written confession was only psychological, not accompanied by physical violence,

threats or promises, apparently to suggest the inference that the effects of psychological coercion would wear off more quickly than the effects of physical violence. We are not aware of any scientific basis for that assumption. Indeed, for all we know the opposite may be the case. Moreover, the only evidence in the record bearing on the matter is that of a psychiatrist testifying for the defense who said: "I do not know what the mental condition of the defendant was when the first interrogation was finished, nor do I know his mental or psychological condition when he began his confession at San Anton. All I can say is that the psychological condition of the individual six hours later had to be the same or at least very similar to his previous condition."

The Supreme Court of Puerto Rico also rested its conclusion in part upon evidence, some oral and some in the form of photographs, that at San Anton Fournier did not appear to be tired or confused, but on the contrary appeared to be calm, collected, at ease, lucid, alert, friendly and cooperative. Appearances, however, can often be deceptive as pointed out in *Blackburn* v. *Alabama*, 361 U.S. 199 (1960). And the testimony that at San Anton Fournier was friendly and cooperative has some tendency to support Fournier's theory of the case, for it has some tendency to show that his docile attitude, which after the interrogation in San Juan suddenly took the place of his previous wary and combative one, persisted throughout the San Anton confession, and from this the inference could be drawn that the coercion which produced the change of attitude in San Juan continued to operate in San Anton.

These factors and others relied upon by the Supreme Court of Puerto Rico for its conclusion that the voluntariness and hence the admissibility of the oral San Anton confession was for the jury to decide would make this a somewhat close case if the confessor's state of mind, which is

all the Supreme Court of Puerto Rico considered, were the only matter to be taken into account. See *Lyons* v. *Oklahoma*, 322 U.S. 594 (1944). But, subsequent to the date of the decision of the Supreme Court of Puerto Rico, the Supreme Court of the United States in *Blackburn* v. *Alabama*, supra, clearly expressed what may have been implicit in some cases subsequent to the *Lyons* case when at page 207 it said:

> "But neither the likelihood that the confession is untrue nor the preservation of the individual's freedom of will is the sole interest at stake. As we said just last Term, 'The abhorrence of society to the use of involuntary confessions . . . also turns on the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.' *Spano* v. *New York*, supra, at 320, 321 [360 U.S. 315 (1959)]. Thus a complex of values underlies the strictures against use by the state of confessions which, by way of convenient shorthand, this Court terms involuntary, and the role played by each in any situation varies according to the particular circumstances of the case."

It is the complex of values in this case which definitely tips the scale. Our sense of justice and fair play is offended by the spectacle of an accused being permitted, if not actively encouraged, to act out his sadistic and brutal crime of violence, which in this case had sexual overtones, in public before newspaper reporters and photographers who were invited to attend and allowed actively to participate in the whole sordid business. The presence of representatives of the press on the occasion served no legiti-

mate public purpose. We find the language of Mr. Justice Blair in *Attorney General* v. *Tonks* (1934) N.Z.L.R. 141, 148 at 150 quoted with approval by Mr. Justice Frankfurter in his concurring opinion in *Pennikamp* v. *Florida*, 328 U.S. 331, 363 Footnote 10 (1946), particularly 'appropriate':

> "It is idle for such newspapers to claim that they adopt such practices in the public interest. Their motive is the sordid one of increasing profits, unmindful of the result to the unfortunate wretch who may ultimately have to stand his trial for murder."

There is enough trial by newspaper in this country already. We shall not encourage that evil practice further by sanctioning oral confessions for the benefit of those elements of the press which seek to profit by pandering to the morbid craving for the sensational and sadistic.

Judgment will be entered vacating the judgment of the Supreme Court of Puerto Rico and remanding the case to that Court for further consistent proceedings.